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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058543
Party	Plaintiff Edge Games Inc
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Date	08/07/2016
Attachments	ReplyToRazersBriefInOppositionToMotion.pdf(2993897 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

EDGE GAMES, INC. (California Corporation)	}	
	}	
Petitioner	}	Cancellation No. 92058543
	}	
v.	}	Mark: EDGE
	}	
RAZER (ASIA-PACIFIC PTE LTD (Singapore Corporation)	}	Registration No. 4,394,393
	}	
Respondent	}	Registered: September 3, 2013
	}	
	}	
	}	
	}	

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**PETITIONER EDGE GAMES INC'S REPLY TO REGISTRANT RAZER'S BRIEF IN  
OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION OF  
DECISION ON MOTION AND MOTION FOR RELIEF FROM FINAL JUDGMENT**

Contrary to the deliberately misleading and deceptive impression given by Registrant's Brief in Opposition, Petitioner Edge Games has not made any false statements in its motion (or in this Reply to Opposition) and has not filed any false statements or false documents. On the contrary, it is Registrant Razer that continues to deliberately grossly mislead the Board in to believing that there was ever any reasonable basis for the Board's motion to dismiss the case in Registrant's favor or any reasonable basis for the Board to ever sanction or punish Petitioner.

**1. Edge Games Has Succeeded in Satisfying the Requirements both for  
Reconsideration and for Relief from Final Judgment**

Once again Registrant Razer deliberately misleads the Board, and it is once again vital that the true facts be summarized for the Board so that the Board will not yet again fall into the trap set by Registrant of believing Petitioner was ever other than fully compliant with Discovery.

Registrant Razer sought to fool the Board in believing Petitioner had withheld documents that Registrant had a right receive. Registrant did this by *inventing fictional* documents that it

first alleged existed (when they did not) and then Registrant disingenuously alleged these fictional documents were being withheld by Petitioner. **This never happened. It simply isn't true that at *any time* prior to the filing of Registrant's November 17, 2015 motion that Petitioner had documents in its possession that it failed to promptly produce.**<sup>1</sup>

Registrant Razer also sought to fool the Board into believing there were facts and information in Petitioner's possession which Registrant had a right to and which Petitioner was refusing to give details of in its discovery responses. Yet again, Registrant sought to fool the Board by inventing fictional, *non existent* information that it *pretended* Registrant was in possession of, and then further fooled the Board again by stating that Registrant was being frustrated in discovery because Petitioner had failed to provide requested information that was in Petitioner's possession. **This never happened. It simply isn't true that at *any time* prior to Registrant filing its November 17, 2015 motion that Petitioner was in possession of any information requested by Registrant that Petitioner had failed to give detail of in its discovery responses.**

As is clarified in the attached declaration by Dr Langdell, in complete contrast to the false picture painted by Registrant, these are the true facts about Petitioner's responsiveness in the discovery process:

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<sup>1</sup> As with Petitioner's prior filing, it should be noted again that there was one, and only one, document that Petitioner had in its possession which it failed to produce and in regard to which Petitioner objected to providing information about regarding license arrangements, quality control, trademark assignments and so forth). Petitioner truly believed in good faith that it was legally obliged to not produce this document without a Federal Court Order compelling its production, and that Petitioner was also legally obliged not to reveal any of the details therein. In the event, Petitioner did provide all the information requested by Registrant in Petitioner's further amended discovery responses served in December 2015, and produced the actual document to Registrant in March 2016, some months before the Board ruled to sanction Petitioner. However, in order to keep the flow of the argument above Petitioner has not repeatedly mentioned the exception of this one document. Thus where Petitioner says it produced all documents in its possession, it should be understood that in the early period this means all but the single *Velocity License and Settlement* document.

- At all times during the period prior to Registrant filing its motion on November 17, 2015, Petitioner had promptly produced to Registrant every document in its possession -- or which came into its possession -- that was requested by Registrant.
- There was never a time when Petitioner had documents in its possession that had been requested by Registrant but which Petitioner was either slow to produce or failed to produce. *That simply never happened.*
- The vast majority of the documents requested by Registrant were in possession of Petitioner's licensee Velocity Micro, and a small balance were thought to be in Petitioner's document storage and were being searched for in good faith.
- As soon as any document requested by Registrant was produced to Petitioner by its licensee then Petitioner promptly produced the document to Registrant.
- As soon as any document requested by Registrant was located as a result of Petitioner's good faith search of its archived materials, that document was then promptly produced to Registrant.
- Any delay at all between the time Petitioner received documents from its licensee or from when Petitioner discovered responsive documents in its storage, was solely caused by reasonable delay such as copying said documents, collating them, Bate Stamping (numbering) them, and otherwise preparing the documents for shipment and service on Registrant.
- Any time during the entire period in question prior to November 17, 2016 that any information came into Petitioner's possession that had been requested by Registrant, then Petitioner promptly informed Registrant of that information now in Petitioner's possession through amendments to Petitioner's discovery responses to Registrant.
- The idea that Petitioner's discovery responses were ever "woefully inadequate" was a pure fiction created by Registrant pretending that documents existed that Petitioner had failed to produce, or that information existed that Petitioner had been asked for but had failed to supply. That simply never happened.
- While Petitioner did maintain some of its objections in its October 2015 discovery responses, these objections only referred to a single document and information contained in that single document (the *Velocity Licensee and Settlement*) which Petitioner truly believed in good faith it was legally obliged to object in regard to (and, of course, Petitioner withdrew those objections in its December further amended discovery responses and did produce this final requested document in March 2016, substantially before the Board ruled on June 2, 2016).

**2. Registrant Once Again Falsely States There Were Documents Not Produced and Information Not Supplied.**

On page 2 of its Brief in Opposition, Registrant repeats its outrageous misleading false statement regarding Petitioner's failure to comply with discovery:

*"...Edge Games failed to produce documents and information regarding (1) the relationship between Edge Games and many of its other alleged licensees and assignors, and (2) the quality control provisions in its alleged licenses and how they are enforced, and (3) how the goodwill assigned to Edge Games for those marks was assigned to it."*

**This quite simply isn't true.** First, Registrant *invented* the idea that there were documents *in Petitioner's possession* relating to Edge Games and its "many other alleged licensees and assignors" and then Registrant *invented* the fiction that these fictional documents contained information about quality control provisions, the assignment of goodwill, etc, that somehow was being withheld from Registrant.

Petitioner was clear in its communication with Registrant at all times that Petitioner only had in its possession documents relating to a single license and that this single document had within it information of the kind being requested, but which Petitioner believed it was legally barred from producing or revealing. That is, **Petitioner made clear that although it had had in the past other licensee arrangements and trademark assignments, none of the documents pertaining to such other licensees or assignments were currently in the possession of Petitioner and thus the information pertaining thereto was not available.**

Put another way, Petitioner made clear to Registrant that any document (other than the Velocity document) relating to a license arrangement or information relating to assignments, quality control, the transfer of goodwill and etc, were not in the possession of Petitioner but that if any such documents or information were to come into Petitioner's possession then the documents and requested information would be promptly produced and stated.

But no other documents came into Petitioner's possession. At no time were there any documents in Petitioner's possession that were being withheld, and at no time was there any information regarding Edge's relationships with other licensees or assignors, or regarding quality control, or regarding assignments or regarding how goodwill was assigned that was not promptly conveyed to Registrant in discovery responses.

**3. Thus, Contrary To The Picture Painted By Registrant, There Never Were Documents or Information Withheld<sup>2</sup>, And Thus Discovery Responses Never were "Woefully Inadequate."**

Continuing its deliberate attempt to mislead the Board, on page 3 of its Brief in Opposition, Registrant goes on to state:

*"Thus, Edge Games' argument now that its improper objection of privilege and confidentiality was limited to just one license is irrelevant, especially considering that the Board has affirmatively agreed in its June 2, 2016 Order that Edge Games' discovery responses were "woefully inadequate."*

What is wrong with this statement -- indeed, what is very wrong with it -- is that Petitioner having clarified in its Motion and Request that its objections were solely in relation to a single document, Registrant then seeks to say this fact is irrelevant! But it is the very opposite of irrelevant since it clarifies that what appeared to be Petitioner "woefully" falling short of adequate discovery response (which is the picture Registrant fooled the Board into believing), in fact because there was only one document in dispute, it means that the discovery dispute between the parties was in fact very small indeed, and (as ultimately happened) was easily resolved without need to resort to a motion to compel.

Most important, clarifying that all the objections were only referring to a single document makes clear that Petitioner only appeared to be giving "woefully inadequate" responses, when in fact Petitioner only falling very marginally short of being FULLY RESPONSIVE, and was only

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<sup>2</sup> Again, other than the single Velocity document withheld for what was understood to be good reason.

short of 100% satisfactory response by objecting in regard to a single document and its contents, and even then only failing to produce the single document because Petitioner truly believed at the time it was barred by law from doing so.

**4. Registrant Continues the Fiction That It Was Unaware Of The Timeframe of Petitioner's Document Production and Information Responses**

In its Brief in Opposition (page 3) Registrant continues its fiction that it was blissfully unaware of when Petitioner was going to be able to produce requested documents (and by logical extension, when Petitioner was going to be able to respond to the interrogatories that requested information about the contents of such documents). Registrant goes on to act as if it was completely clueless about the timing of production, and had reason to believe production would not happen, either without the Board compelling it or at all. **This simply isn't true.**

As can be seen in the email exchanges between Petitioner's Virginia based attorney and Mr. Barritt acting for Registrant dated October 6, 2015 (Exhibit A to Langdell decln. hereto), Petitioner's attorney Jensen states:

*"I will, of course, provide copies of produced documents to you as soon as practicable after their receipt."*

What this confirms, then, is that as of October 6, 2015 Petitioner still had not received into its possession any of the documents requested by Registrant. And here Registrant is being kept well informed of the anticipated timing of production, and assured that if any documents are received into Petitioner's possession then they will be produced to Registrant promptly thereafter.

What is also clear in these email exchanges is that the parties were in good faith discussions to arrange and attend a deposition of Petitioner's licensee corporation (Velocity), and that it was intended that all relevant documents, including documents requested by Registrant in discovery, would be sure to be produced to Registrant prior to attendance at the deposition.

Then in the further email exchanges between Petitioner's attorney Jensen and Registrant's attorney Barritt dated around October 23, 2015, Mr. Jensen states clearly (see Exhibit B to Langdell decln. hereto):

*"We have received no substantive production thus far -- only boilerplate objections."*

Thus here, just a few weeks before Registrant disingenuously filed its motion claiming to have no clue when it might receive requested discovery, Petitioner's attorney was clearly stating that it was proving to be very difficult to obtain the documents requested by Registrant. At this time, too, Petitioner was also making clear to Registrant that the few documents that Registrant had requested that were not being waited on from Velocity, were still being searched for in good faith by Petitioner in its storage. Registrant was thus being well informed as to the progress of obtaining documents to produce (and hence was being told why there was understandable delay in giving further interrogatory responses for information that is included in the documents still yet to be received by Petitioner).

And then, finally, in Mr. Jensen's further email exchange with Mr. Barritt on October 23, 2015, Mr. Barritt makes clear that he will not be available between November 16 and November 27, 2015 (see Exhibit C to Langdell decln. hereto). It was thus clearly understood between the parties that as at late October, the anticipated timeline was that the deposition would most likely take place after November 27, 2015, and that any produced documents in preparation for the deposition that came into Petitioner's possession would be handed over to Registrant as promptly as possible.

Since Mr. Barritt had indicated that he was going to be unavailable from November 16-27, the goal was to encourage Velocity Micro to produce the missing documents before that time period and hand them over to Registrant's law firm on or about November 16-17, 2015, so that



the firm could prepare them and evaluate them in preparation for Mr. Barritt's return. Thus when Mr. Barritt filed the motion on November 17, 2015 -- a date he said, we note, he was not going to be available -- he filed the motion just as he was reasonably expecting the documents to be sent to him. And indeed, as we know, they were sent to him earlier in the day on November 17, 2015 before he filed the motion in question.

## **5. Timing of Document Production**

Mr. Barritt wishes to make much of the fact that he filed the motion for sanctions after Petitioner had already mailed the bundle of 852 pages of discovery documents to Registrant, but before he actually received the documents. However, service is perfected when the documents were mailed, not when they were received, thus it is a true fact that Registrant was served with all the documents that it had requested during discovery before Registrant filed its motion. Moreover, as a result of extensive communication between Petitioner's attorney and Mr. Barritt, and between Petitioner and Mr. Barritt, it was abundantly clear that Registrant should expect service of the requested discovery documents at about that time.

And to be clear again, **the 852 pages of documents served on Registrant early in the day on November 17, 2015 consisted of every document requested by Registrant<sup>3</sup> which were now in Petitioner's possession, and this production was being done promptly after these documents came into Petitioner's possession.** The Board should please note that even now in its Brief in Opposition, Registrant does not deny that the November 17, 2015 document production met all of its discovery requests for documents. Further, Registrant does not deny that Petitioner's early December 2015 further amended discovery responses met to its full satisfaction all of its interrogatory requests, too. Since Petitioner did not possess the necessary documents at the time it did its amended discovery request responses in October, it is only reasonable that the

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<sup>3</sup> Again, with the sole excusable good faith exception

Registrant's requests were finally fully met in the further amended set of responses. Petitioner should not be penalized or sanctioned, then, for any shortfall or inadequacy of its October amended discovery responses since at that time Petitioner lacked possession of the documents necessary to give full and complete responses.

**6. Petitioner Did Not Fake Any Evidence; the January Email was Bcc'd**

As can be seen from the attached "header" to the email attached hereto sent to Ms. English of the TTAB on January 8, 2016, there was a good faith intent to copy Mr. Barritt with the email. It was unfortunate that his email address was placed in the "Bcc" line, since this gave the impression to the Board (and to Petitioner too during the initial consideration of this issue, hence why Petitioner missed this fact when it replied to the Board's Order to Show Cause). But on checking again it can be seen that there was a typing error in Mr. Barritt's address (fe.com rather than fr.com), which in turn explains why he did not receive the email. But the *intent* to copy Registrant was there. This is at worse excusable neglect, but does not rise to a deliberate attempt to have *ex parte* communication that would justify the extreme sanction of dismissing the case in Registrant's favor. But to be completely clear, Petitioner copied Registrant with the January email because it was Petitioner's usual practice to do so, not because Petitioner was aware the Board had ordered that *ex parte* contact was not to occur.

**7. Registrant's Own Evidence Shows They Believed The Parties Had Agreed Document Production by Mail; Petitioner Did Have Permission for Motion and did understandably become confused over the issue of *ex parte* contact; Petitioner's Privilege Log Was in Evidence During the Proceedings**

Ironically, Registrant's own evidence proves that *they* believe that the agreed method of document production was by mail. In Mr. Barritt's email dated January 8, 2016 exhibited to Mr. Barritt's declaration in his "Attachment A", second page, Mr. Barritt writes:

*"I propose we now memorialize in writing the practice we have each **been following** regarding document production, namely, that each party will produce documents by delivering them to the address of record for the other party." (our emphasis)*

Note, Mr. Barritt says this is the practice he believes the parties had been following (past tense), implying it had been followed since Discovery first commenced. As to the Board granting Petitioner permission to file a motion in October but not using it until December, this is because the Board asked that Petitioner try amicable resolution first before resorting to a motion. When the permission was granted it was anticipated Petitioner would use it later. The fact the Interlocutory Attorney telephoned Petitioner and spoke for 7 minutes means she breached her own order: regardless of what she said in those 7 minutes, she thus at the least lead to Petitioner being justifiably confused as to whether *ex parte* contact was permitted or not. As to the Privilege Log, it was in evidence and proof of service on Registrant was provided. It is nonsense for Registrant to now suggest logs were not agreed when Mr. Barritt's own letter cited in the Petitioner's motion proves logs were agreed upon (and then exchanged).

**In summary**, Petitioner should be granted its motion and be permitted to have its trial on the merits: at trial Petitioner has an almost certain chance of prevailing and it would be a travesty of justice to deprive Petitioner of its "day in court." If the sanction of dismissal is permitted to stand it will be the first time in the history of the TTAB that a party was sanctioned with dismissal for failing to produce documents it did not possess, failing to reveal information it did not have, and for making *ex parte* contact with the Board when it didn't do so, or intend to do so.

Dated: August 6, 2016

Respectfully submitted:

By: /s/ Tim Langdell  
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CEO, Edge Games Inc,  
Opposer in Pro Se,  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>EDGE GAMES, INC.</b>	}	
	}	
<b>Petitioner,</b>	}	<b>Cancellation No. 92058543</b>
	}	
<b>v.</b>	}	<b>Mark: EDGE</b>
	}	
<b>RAZER (ASIA-PACIFIC) PTE LTD</b>	}	<b>Registration No. 4,394,393</b>
	}	
<b>Registrant</b>	}	
	}	
_____	}	

**CERTIFICATE OF SERVICE**

It is hereby certified that on August 6, 2016 a true copy of the foregoing MOTION FOR RECONSIDERATION OF DECISION ON MOTION AND MOTION FOR RELIEF FROM FINAL JUDGMENT AND DECLARATION OF DR TIMOTHY LANGDELL, were deposited in U.S. certified mail postage prepaid, addressed to:

Keith A. Barritt Esq  
Fish & Richardson P.C.  
P.O. Box 1022  
Minneapolis, MN 55440-1022

Signature: /s/ Tim Langdell

# EXHIBIT

Declaration of Dr Timothy Langdell  
with attached Exhibits

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

EDGE GAMES, INC.	}	
(California Corporation)	}	
	}	
Petitioner	}	Cancellation No. 92058543
	}	
v.	}	Mark: EDGE
	}	
RAZER (ASIA-PACIFIC PTE LTD	}	Registration No. 4,394,393
(Singapore Corporation)	}	
	}	Registered: September 3, 2013
Respondent	}	
	}	
	}	
	}	

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**DECLARATION OF DR. TIMOTHY LANGDELL**

I, Dr. Timothy Langdell, declare as follows:

1. I am the CEO of Edge Games Inc, Petitioner in *Pro Se* in this action and I am over 18 years of age.
2. Mr. Barritt, representing Registrant in this action, is consistently deliberately making false statements so as to grossly mislead the Board as to the true facts of this case.
3. On or about November 17, 2015, Mr. Barritt deliberately invented the fiction that Registrant was being frustrated in its attempts to gain discovery documents and information that it had requested from Petitioner. However, this was not true. Mr. Barritt was fully aware on the day he filed Registrant's motion that Registrant was about to receive all but one of the documents that it had requested, and about to receive all the information it had requested, too, arising from those documents that had just come into Petitioner's possession (again with the sole exception of the one document and the information contained in it).
4. At the time they were requested, the documents requested by Registrant were not in Petitioner's possession. The documents requested fell into two categories: the bulk of the documents were in possession of Petitioner's licensee (Velocity Micro) and the lesser balance of the documents were also not then currently in Petitioner's possession but Petitioner was undertaking a thorough good faith search in stored documents and archives to try to locate those documents.

5. Prior to November 17, 2015, I and Petitioner's Virginia based attorney (based there since Velocity are based there), Dale Jensen, made our best efforts to keep Mr. Barritt updated as to when we believed the requested documents would be in Petitioner's possession and repeatedly assured Mr. Barritt that as soon as they are in Petitioner's possession then they would be produced as soon as reasonably possible. Attached in **Exhibit A** are email exchanges on or about October 6, 2015 between Mr. Jensen and Mr. Barritt that make this point clear. In his email of that date, Mr. Jensen clearly states: *"I will, of course, provide copies of produced documents to you as soon as practicable after their receipt."*
6. Prior to November 17, 2015 Petitioner was not in possession of the requested documents and thus could not produce them. This fact was made clear to Mr. Barritt by me and by Mr. Jensen. In Mr. Jensen's email of October 23, 2015 (see **Exhibit B** hereto) he makes clear: *"We have received no substantive production thus far -- only boilerplate objections."* Thus Mr. Barritt could be in no doubt that Petitioner was still making every possible effort to gain possession of the documents Registrant had requested, but that as of late October Petitioner had still not been able to gain possession of *any* of them.
7. The two parties were in close contact during this October to November 2015 timeframe, with Mr. Jensen and Mr. Barritt discussing mutually convenient dates for Velocity Micro's CEO to be deposed with both parties in attendance. And it could not have been more clear to Mr. Barritt that the clear goal was to first gain all requested documents from Velocity Micro before setting a date for the deposition. And that due to the problems in gaining the documents from Velocity, the deposition would need to be postponed until at least mid November, and perhaps to as late as early December.
8. In the email exchange between Mr. Jensen and Mr. Barritt also on October 23, 2015, Mr. Barritt confirmed that he would not be available between November 16-27, 2015 and thus by implication the deposition would likely take place after this time period (**Exhibit C** hereto).
9. Thus on November 17, 2015 at the moment Mr. Barritt filed Registrant's Motion for Sanctions for, in sizable part, failure to respond to discovery requests, Mr. Barritt was (as we maintain) very aware that he was about to be served with the documents Petitioner had just received from Velocity and ones Petitioner had just discovered from its search in storage. Or, in Mr. Barritt's best case, the last information he had from me or from Mr. Jensen was that we were still having trouble gaining copies of the documents from Velocity, and still not able to locate requested copies of documents from storage. Thus even in *his best case*, Mr. Barritt should have been of the understanding that the lack of produced documents was solely because none were yet in possession of Petitioner. Not because of any attempt by Petitioner to frustrate Registrant's discovery efforts.
10. Thus on November 17, 2015 there are only two possibilities: *either* Mr. Jensen knew (as we say he did) that he was about to receive the documents, *or* the last information he had was that they were still not in Petitioner's possession and thus quite reasonably could not be produced yet. Thus for Mr. Barritt to file a motion suggesting that Petitioner's responses to document production had been "woefully inadequate" was not only not true,

it was a deliberate falsehood intended to sway the minds of the Board members making the decision on Registrant's motion and gain a default judgment in an action that Registrant knew it was otherwise certain to lose if heard on the merits.

11. On November 17, 2015 Mr. Barritt was, or should have been, fully aware that Petitioner had abandoned the intention to depose Velocity's CEO because the CEO had provided a sworn declaration covering all of the information and confirming the existence of all the documents that Registrant had requested in discovery. On the day he filed the Motion, then, Mr. Barritt was aware, or should have been aware, that a copy of that declaration along with many *hundreds* of pages of the requested documents was on its way to him, and had been served by the agreed method of USPS mail earlier the same day.
12. As to the agreement that the parties would serve documents on each other via USPS mail, this was proposed by Mr. Barritt in his letter that Petitioner has identified in its current Motion. And Petitioner accepted that proposal. It is true that later when Mr. Barritt started to argue about whether he had been properly served with documents because he had not personally viewed them at a location in Pasadena, I did then send one email in which I sought to say that if the parties had not agreed production by USPS mail, then the few documents Registrant had sent Petitioner in response to Petitioner's discovery requests for document production were thus also not validly produced or served. The email was intended to show Mr. Barritt that he cannot have his cake and eat it too: if he was going to argue that Petitioner's 852 pages of documents were not validly served, then he would have to admit that Registrant did not validly serve its bundle of documents on Petitioner either.
13. The bottom line though, as Mr. Barritt's email of January 8, 2016 proves, is that Mr. Barritt understood that the parties had agreed to production of all requested documents by USPS mail. And he was being purely disingenuous when in Registrant's Brief in Opposition he seeks to claim the parties had not agreed to such method of production. Again, Registrant itself produced all its evidence via USPS mail, and if it sincerely believed that production via mail had not been agreed, then it would have instead proposed a time and place for documents to be viewed rather than sending them to Petitioner via mail.
14. As to Registrant's false allegation that Petitioner had withheld any information from Registrant and was thus "frustrating" Registrant's attempt to gain information they have a right to, this false picture was once again created by Mr. Barritt deliberately making false statements to the Board.
15. Since prior to or about November 17, 2015 Petitioner did not possess the documents that Registrant had requested, therefore it follows that Petitioner also did not possess the information in those documents in order to more fully respond to Registrant's interrogatories regarding license agreements, trademark assignments, quality control measures, the transfer of goodwill and so forth.



16. Just as it would be extremely unjust to sanction or punish Petitioner for failing to produce documents it did not possess, similarly it would be unjust to sanction or punish Petitioner for failing to give information that was at the time also not in Petitioner's possession.
17. Mr. Barritt invented the fiction that there were documents in Petitioner's possession regarding licenses other than the one with Velocity, and that therefore there were further documents and information being withheld by Petitioner in regard to such details as licensee/licensor relationships, quality control, assignments, passage of goodwill, and so forth. But this was all a fiction invented by Mr. Barritt since I had made clear to him that all the documents Petitioner had in its possession were promptly being produced -- thus if there were no documents relating to other license arrangements, quality control, mark assignment, etc, then that is because no such documents or information were in Petitioner's possession.
18. Yet this did not stop Mr. Barritt creating the fiction that Registrant had not received documents and information in Petitioner's possession which Petitioner was either being slow to produce or refusing to produce. There was never a time when that was true, and this fiction was invented by Mr. Barritt solely to try to convince the board of grounds for summary judgment because Mr. Barritt was aware that Registrant has little to no chance of prevailing on the merits at trial if Registrant is not successful in finding some loophole on which to base a summary judgment.
19. I also note that Registrant has displayed a consistent goal of seeking a default judgment on some basis or other ever since the action commenced, as can be seen by the sizable number of attempts to move for dismissal or for sanctions against Petitioner.
20. I remain confident that Registrant safely received a copy of Petitioner's Privilege Log and I am puzzled that Mr. Barritt should now deny this so many months after the events in question, and only when it served Registrant to deny receipt of the log.
21. To the best of my knowledge and recollection, all documents served on Registrant since the Board made its order dated January 30, 2015, were served using US Certified Mail. If the certificates of service dated July 2, 2016 and July 1, 2016, stated otherwise then I presume this was simple clerical error in typing the certificates.
22. A copy of Petitioner's substitution of counsel was served on Registrant, contrary to what Mr. Barritt alleges.
23. I am appalled that Registrant would suggest that the proof Petitioner filed of the 7 minute call from the Board's Interlocutory Attorney on October 5, 2015 is a "doctored document." That document is a copy of my telephone bill for that period, clearly showing the incoming 7 minute call made from the telephone number of the Interlocutory Attorney handling this action. This document is most certainly not doctored, and if the Board is at all minded to believe such blatant defamatory accusations by Registrant, then I am happy to produce the original of the document in question so that the Board may inspect it for itself.

24. Registrant states that showing there was a 7 minute incoming call from the Board to me on behalf of Petitioner does not prove what the call contained. This is true, but it misses the point: the mere fact that the Board's Interlocutory Attorney telephoned me and spoke to me for 7 minutes means the Attorney breached her own Board order of January 2015 since she stated in the "small print" footnote that there must be no such *ex parte* contact.
25. But it is a fact that the Board made such *ex parte* contact -- regardless of what was said in that call, it was undeniably *ex parte* contact with Petitioner instigated by the Board in response to an *ex parte* call from me to the Interlocutory Attorney.
26. With the other parallel case having the requirement that I call the Interlocutory Attorney by telephone (and usually have her then call me back) to make a verbal request for permission to file an unconsented motion, the fact that the Board telephoned me on October 5, 2015 caused me to believe that this was the action that had required me to make *ex parte* telephone contact for approval to file a motion. As can be seen from the evidence, I first called the Interlocutory Attorney and she then returned my call, exactly as if the "rule" in this action was to use an *ex parte* phone call to gain such permission. And, to be clear, what the Board stated in that 7 minutes was that Petitioner was being given permission to file an unconsented motion.
27. In giving its permission on October 5, 2015 to file an unconsented motion, the Board also asked that the motion not be filed immediately, but that Petitioner make further attempts at amicable resolution before filing a motion. This is why Petitioner still had valid permission to file an unconsented motion in December.
28. And again, the filing Petitioner did on December 8, 2015 was not intended by me to be an unconsented motion, but if the Board is determined to view it as such then it remains a fact that Petitioner had gained permission to file such a motion and thus Petitioner should not be sanctioned or punished for doing so.
29. At the time Mr. Barritt filed Registrant's motion for sanctions on November 17, 2015, he was aware that within a few days of that date Registrant was due to serve on Petitioner its responses to Petitioner's second set of discovery requests. As can be seen by the evidence (see **Exhibit C** hereto), Mr. Barritt had just left for what I believe was vacation and would not return until well after he was due to file Registrant's new discovery responses. It is thus abundantly obvious that Mr. Barritt filed the motion in order to have a basis for the action to be stayed while he went on vacation. And this was clearly an abuse of process that ironically rather than the Board admonishing Mr. Barritt for doing, instead the Board rewarded Mr. Barritt's deceit by granting him the extreme sanction he was requesting (that I remain convinced he himself never for one moment believed the Board would actually grant Registrant).
30. The fact is that on November 17, 2015 there was no evidence at all that Petitioner was frustrating Registrant's attempts to obtain documents or information. On the contrary, all

documents and all information were being produced and given promptly the moment they came into Petitioner's possession.

31. The Board's order sanctioning Petitioner by dismissal of the action thus stands as a travesty of justice in which the Board has given the ultimate sanction to Petitioner for allegedly failing to produce documents that Petitioner did not possess, failing to give information that Petitioner also did not possess, filing an unconsented motion which Petitioner actually had permission to file, and making *ex parte* contact with the Board that the Board expressly encouraged Petitioner to make (and which the Board made itself), despite having hidden in a small-print footnote in an earlier order that such *ex parte* contact should not occur.
32. In short, the only dispute between the parties over discovery in November 2015 was over a single Velocity Micro document (and the information contained in it) that I truly believed at the time Petitioner was barred by law from producing, and the fact that Registrant had used a trick of the proceedings to gain a stay of the proceedings at the very moment it was due to give crucial discovery responses to Petitioner's second set of discovery requests. While I continued several *template* objections to interrogatories, these were either merely put in as a general retention of rights (but not to *exercise* those rights of objection) or they were exercised solely in regard to the one document Petitioner was withholding because it believed in law it had to withhold it.
33. There were, then, not even grounds for the Board to issue an order to compel Petitioner to produce documents or answer interrogatories, since all documents had been produced and all questions answered. I note that in Registrant's moving papers since last Fall, including its most recent Brief in Opposition, Registrant does not deny that all discovery issues had been fully resolved by at latest early December 2015, and that they were 99% resolved even before Registrant filed its November 17, 2015 motion, and were then entirely resolved in early 2016 when Petitioner produced the final single remaining document that had been requested.
34. This then all does not amount to even an order to compel discovery, let alone sanction Petitioner at all, and certainly not a reasonable foundation or justification for giving (as the Board did) the ultimate sanction of dismissal when Petitioner did nothing particularly wrong and nothing that was not fully resolved to the Registrant's fully satisfaction many months prior to the Board issuing the order to dismiss the case under sanction. Not least since when this action is heard on the merits, Petitioner is *certain* to prevail.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing statements are true and correct to the best of my knowledge, information and belief.



Dr. Timothy Langdell

Date: August 6, 2016

# EXHIBIT A

**Subject:** Re: proposed deposition of Velocity Micro in EDGE trademark cancellation action no. 92058543 (F&R File 39771-0019PP1)  
**From:** "Dale Jensen" <[djensen@jensenjustice.com](mailto:djensen@jensenjustice.com)>  
**Sent:** 10/6/2015 2:42:24 PM  
**To:** "Keith Barritt" <[barritt@fr.com](mailto:barritt@fr.com)>  
**CC:** "[tim@edgegames.com](mailto:tim@edgegames.com)" <[tim@edgegames.com](mailto:tim@edgegames.com)>  
**Attachments:** image003.png

Dear Mr. Barritt,

Thank you for your e-mail.

Service of the subpoenas was completed yesterday.

At this point in time I am very reluctant to change the deposition date for a couple of reasons:

1. I have a trip that was scheduled months ago between October 28 and November 11.
2. Because of Velocity Micro's non-compliance with the subpoenas filed by Ms. Krizan last May, we believe that there is some likelihood that we will need to ask the United States District Court for the Eastern District of Virginia to compel compliance with both subpoenas. It is not clear at this point whether the prior non-compliance was due to defects with the subpoenas or if Velocity Micro is just not going to comply with any subpoena unless ordered to by a court. Given the short time remaining in discovery in the cancellation proceedings, delaying the deposition by a week could be problematic even if I were to change my travel plans to accommodate your schedule.

It would seem to me that as large a firm as Fish & Richardson is, that it should be possible for another attorney from your firm to attend the deposition at the scheduled time on October 23rd. Please advise if such is possible.

I will, of course, provide copies of produced documents to you as soon as practicable after their receipt.

Sincerely,

Dale

Dale R. Jensen, Attorney at Law

Dale Jensen, PLC

Main office:

606 Bull Run

Staunton, VA 24401

Charlottesville office:

2027 Woodbrook Ct, Suite 2027

Charlottesville, VA 22901

(434) 249-3874

(866) 372-0348 (fax)

[djensen@dalejensenlaw.com](mailto:djensen@dalejensenlaw.com)

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---

**From:** Keith Barritt <[barritt@fr.com](mailto:barritt@fr.com)>

**Date:** Tuesday, October 6, 2015 at 2:50 PM

**To:** Dale Jensen <[djensen@jensenjustice.com](mailto:djensen@jensenjustice.com)>

**Cc:** "[tim@edgegames.com](mailto:tim@edgegames.com)" <[tim@edgegames.com](mailto:tim@edgegames.com)>

**Subject:** proposed deposition of Velocity Micro in EDGE trademark cancellation action no. 92058543 (F&R File 39771-0019PP1)



Dear Mr. Jensen:

Thank you for your email below and related letter (attached). As you may have noticed from my email auto-reply, I was out of the office last week.

As an initial matter, your letter states that the two subpoenas are “to be served” on Velocity Micro, though it is not clear to me that they have been served and I look forward to your clarification.

I also regret to inform you that I am not available for a deposition in Richmond on October 23. I am currently available October 29 – 30, November 2, and November 5 - 6. I trust you will be able to coordinate with the relevant parties and let me know what date is available for all.

I also note that you have requested that documents be produced in your office by October 21. I will of course need time to review any produced documents prior to any deposition. Thus, I ask that you confirm you will immediately send to me for delivery no later than October 26 any documents that are produced by Velocity Micro.

I look forward to hearing from you.

Sincerely,

**Keith Barritt** :: Principal :: Fish & Richardson P.C.  
1425 K Street, N.W., Suite 1100 Washington DC 20005  
+1-202-626-6433direct :: [barritt@fr.com](mailto:barritt@fr.com)  
[fr.com](http://fr.com) :: [FishTMCopyrightblog.com](http://FishTMCopyrightblog.com) :: [Bio](#)

---

**From:** Dale Jensen [<mailto:djensen@jensenjustice.com>]  
**Sent:** Wednesday, September 30, 2015 2:35 PM  
**To:** Keith Barritt  
**Subject:** EDGE Trademark Cancellation Action TTAB Cancellation No. 92058543

Mr. Barritt,

We have been retained in a limited capacity for the above styled matter to assist with certain discovery.

Please review the attached documents.

Hard copies are also being sent to your office.

Sincerely,

Dale

Dale R. Jensen, Attorney at Law

Dale Jensen, PLC

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Staunton, VA 24401

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\*\*\*\*\*  
\*\*\*\*\*



# EXHIBIT B

**Subject:** Re: address for delivery of documents produced by Velocity Micro in EDGE trademark cancellation action no. 92058543 (F&R File 39771-0019PP1)  
**From:** "Dale Jensen" <[djensen@jensenjustice.com](mailto:djensen@jensenjustice.com)>  
**Sent:** 10/23/2015 1:59:01 PM  
**To:** "Keith Barritt" <[barritt@fr.com](mailto:barritt@fr.com)>  
**Attachments:** image001.png; image002.png

Mr. Barritt,

The process for getting information pursuant to the subpoenas has been more arduous than we had hoped. We have received no substantive production thus far – only boilerplate objections.

We have been in discussions with counsel for the subpoenaed parties in an effort to resolve matters, but have not fully done so yet.

Consequently, we have decided to continue the deposition and will not be holding it on Monday. I will let you know as soon as progress is made as to how discovery will proceed concerning the subpoenas.

Sincerely,

Dale

Dale R. Jensen, Attorney at Law

Dale Jensen, PLC

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Staunton, VA 24401

Charlottesville office:

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---

**From:** Keith Barritt <[barritt@fr.com](mailto:barritt@fr.com)>

**Date:** Saturday, October 17, 2015 at 12:17 PM

**To:** Dale Jensen <[djensen@jensenjustice.com](mailto:djensen@jensenjustice.com)>

**Subject:** address for delivery of documents produced by Velocity Micro in EDGE trademark cancellation action no. 92058543 (F&R File 39771-0019PP1)



Dear Mr. Jensen:

Please have copies of all documents produced by Velocity Micro on October 21 delivered to me directly at my Washington, D.C. address below, or sent electronically to [barritt@fr.com](mailto:barritt@fr.com).

As noted in prior correspondence below, I anticipate receiving these documents by October 23 for the October 26 deposition.

Sincerely,

Keith Barritt :: Principal :: Fish & Richardson P.C.  
1425 K Street, N.W., Suite 1100 Washington DC 20005  
+1-202-626-6433 direct :: [barritt@fr.com](mailto:barritt@fr.com)  
[fr.com](http://fr.com) :: [FishTMCopyrightblog.com](http://FishTMCopyrightblog.com) :: [Bio](#)

---

**From:** Keith Barritt  
**Sent:** Friday, October 09, 2015 8:38 AM  
**To:** Dale Jensen

**Cc:**[tim@edgegames.com](mailto:tim@edgegames.com)

**Subject:** RE: proposed deposition of Velocity Micro in EDGE trademark cancellation action no. 92058543 (F&R File 39771-0019PP1)



Dear Mr. Jensen:

Thank you for your email below.

I can make October 26 or 27 available. That will still allow for your travel plans, and will also allow for you to deliver to me by October 23 any documents that are produced on October 21. I believe this is a reasonable accommodation and look forward to hearing from you.

Sincerely,

**Keith Barritt**:: Principal:: Fish & Richardson P.C.  
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[fr.com](http://fr.com) :: [FishTMCopyrightblog.com](http://FishTMCopyrightblog.com) :: [Bio](#)

---

**From:** Dale Jensen [<mailto:djensen@jensenjustice.com>]

**Sent:** Tuesday, October 06, 2015 5:42 PM

**To:** Keith Barritt

**Cc:**[tim@edgegames.com](mailto:tim@edgegames.com)

**Subject:** Re: proposed deposition of Velocity Micro in EDGE trademark cancellation action no. 92058543 (F&R File 39771-0019PP1)

Dear Mr. Barritt,

Thank you for your e-mail.

Service of the subpoenas was completed yesterday.

At this point in time I am very reluctant to change the deposition date for a couple of reasons:

1. I have a trip that was scheduled months ago between October 28 and November 11.
2. Because of Velocity Micro's non-compliance with the subpoenas filed by Ms. Krizan last May, we believe that there is some likelihood that we will need to ask the United States District Court for the Eastern District of Virginia to compel compliance with both subpoenas. It is not clear at this point whether the prior non-compliance was due to defects with the subpoenas or if Velocity Micro is just not going to comply with any subpoena unless ordered to by a court. Given the short time remaining in discovery in the cancellation proceedings, delaying the deposition by a week could be problematic even if I were to change my travel plans to accommodate your schedule.

It would seem to me that as large a firm as Fish % Richardson is, that it should be possible for another attorney from your firm to attend the deposition at the scheduled time on October 23rd. Please advise if such is possible.

I will, of course, provide copies of produced documents to you as soon as practicable after their receipt.

Sincerely,

Dale

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---

**From:** Keith Barritt <[barritt@fr.com](mailto:barritt@fr.com)>

**Date:** Tuesday, October 6, 2015 at 2:50 PM

**To:** Dale Jensen <[djensen@jensenjustice.com](mailto:djensen@jensenjustice.com)>

**Cc:** "[tim@edgegames.com](mailto:tim@edgegames.com)" <[tim@edgegames.com](mailto:tim@edgegames.com)>

**Subject:** proposed deposition of Velocity Micro in EDGE trademark cancellation action no. 92058543 (F&R File 39771-0019PP1)



Dear Mr. Jensen:

Thank you for your email below and related letter (attached). As you may have noticed from my email auto-reply, I was out of the office last week.

As an initial matter, your letter states that the two subpoenas are "to be served" on Velocity Micro, though it is not clear to me that they have been served and I look forward to your clarification.

I also regret to inform you that I am not available for a deposition in Richmond on October 23. I am currently available October 29 – 30, November 2, and November 5 - 6. I trust you will be able to coordinate with the relevant parties and let me know what date is available for all.

I also note that you have requested that documents be produced in your office by October 21. I will of course need time to review any produced documents prior to any deposition. Thus, I ask that you confirm you will immediately send to me for delivery no later than October 26 any documents that are produced by Velocity Micro.

I look forward to hearing from you.

Sincerely,

**Keith Barritt::** Principal:: Fish & Richardson P.C.  
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[fr.com](http://fr.com) :: [FishTMCopyrightblog.com](http://FishTMCopyrightblog.com) :: [Bio](#)

---

**From:** Dale Jensen [<mailto:djensen@jensenjustice.com>]  
**Sent:** Wednesday, September 30, 2015 2:35 PM  
**To:** Keith Barritt  
**Subject:** EDGE Trademark Cancellation Action TTAB Cancellation No. 92058543

Mr. Barritt,

We have been retained in a limited capacity for the above styled matter to assist with certain discovery.

Please review the attached documents.

Hard copies are also being sent to your office.

Sincerely,

Dale

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\*\*\*\*\*



# EXHIBIT C

From: "Dale Jensen" <[djensen@jensenjustice.com](mailto:djensen@jensenjustice.com)>  
To: "Tim" <[tim@edgegames.com](mailto:tim@edgegames.com)>  
Cc: "Tim Langdell" <[timlangdell@gmail.com](mailto:timlangdell@gmail.com)>  
Sent: 11/23/2015 4:14:12 PM  
Subject: Re: Re[2]: proposed deposition of Velocity Micro in EDGE trademark  
cancellation action no. 92058543 (F&R File 39771-0019PP1)

Hello Tim,


The last communications that I sent to Mr. Barritt was on October 23, 2015 at 4:59 PM (an e-mail which you were sent a blind copy). In response, Mr. Barritt responded very briefly (at 7:51 PM on that same date) as follows:

Dear Mr. Jensen:

Thank you for your update below.

Please note that I will be unavailable November 16 – 27, currently with the exception of Monday, November 23. I trust we will be able to agree to a mutually acceptable date as this process continues.

Sincerely,



The only communication from Mr. Barritt between October 23, 2015 and November 17, 2015. No attempt by Barritt to obtain an update on document production

**Keith Barritt :: Principal :: Fish & Richardson P.C.**  
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